

STATE BOARD OF LAND COMMISSIONERS

Philip E. Batt, Governor and President of the Board
Pete T. Cenarrusa, Secretary of State
Alan G. Lance, Attorney General
J. D. Williams, State Controller
Anne C. Fox, Superintendent of Public Instruction

Stanley F. Hamilton, Secretary to the Board

MINUTES REGULAR LAND BOARD MEETING December 15, 1998 9:00 AM

The regular meeting of the Idaho State Board of Land Commissioners was held on December 15, 1998, in Boise, Idaho. The Honorable Philip E. Batt presided. The following members were present:

Honorable Secretary of State Pete T. Cenarrusa
Honorable State Controller J.D. Williams
Honorable Attorney General Alan G. Lance
Honorable Superintendent of Public Instruction Anne C. Fox

Secretary to the Board Stanley F. Hamilton

CONSENT AGENDA

Director Hamilton informed the Board that on Agenda Item #4, regarding the results of 1998 lease auctions, the lessee, Mr. Grant Lloyd – grazing lease G-9048, has filed an appeal. This appeal is tentatively scheduled to be considered at the February Land Board meeting. Passage of this agenda item is with the understanding that the Grant Lloyd appeal will not be part of this agenda item.

The motion was made by State Controller Williams to approve the consent agenda with the exception of grazing lease G-9048 – agenda item #4. Attorney General Lance seconded the motion. The motion carried on a vote of 5-0.

1. The following official transactions were approved:

Bureau of Real Estate, Easement Section for October 1998
Bureau of Real Estate, Land Sale Section for October 1998
Bureau of Minerals for October 1998
Bureau of Range Management and Surface Leasing for Cropland, Grazing, Cottage Site,
Miscellaneous and Submerged Land Leases for October 1998
Timber Sales for the period October 20, 1998 through November 24, 1998

2. The following timber sale, staffed by Ron Litz, Chief, Bureau of Forest Management, was approved:

A. Murray Creek CR-6-0148 6,260 MBF

3. The following application for addition to the qualified bidders list for timber sales, staffed by Ron Litz, Chief, Bureau of Forest Management, was approved:

Alliance Construction, Inc.
6700 Winding Trail Lane
PO Box 2669
Coeur d'Alene, ID 83816

4. The Board accepted the high bids that were submitted at the 1998 lease auctions, with the exception of lease G-9048, lessee Grant Lloyd. An appeal was filed on this grazing lease and is tentatively scheduled to be considered at the February 1999 Land Board meeting. This issue was staffed by Tracy Behrens, Range Management Specialist.
5. The addition of Nancy Umbach, Andrea Umbach-Tevlin and M.Kathleen and Karl C. Klokke to the Payette Lake Non-Lakefront Cottage Site Exchange List was approved. This issue was staffed by Perry Whittaker, Chief, Bureau of Real Estate.
6. The Disclaimer of Interest request from Thomas and Norma Jean Tapscott of Salmon for 10.82 acres of accretion land, staffed by Perry Whittaker, Chief, Bureau of Real Estate, was approved.
7. The request for Deficiency Warrant Authority for gypsy moth suppression, staffed by R. Ladd Livingston, Forest Insect and Disease Supervisor, was approved.

REGULAR AGENDA

At the request of Director Hamilton, agenda item #15 was placed at the beginning of the regular agenda.

15. Lakeview Village/Ponderosa Park Lands Exchange – Idaho Department of Lands/Idaho Parks and Recreation - Presented by Perry Whittaker, Chief, Bureau of Real Estate

Director Hamilton stated that this agenda item is a request for conceptual approval to initiate a land exchange with the Department of Parks and Recreation for the Lakeview Village parcel.

Perry Whittaker provided the background information. Nick Krema, Deputy Attorney General was present for any questions. Yvonne Ferrell, Director, Idaho Parks and Recreation was also available.

The Department requested Land Board conceptual approval to enter into a Memorandum of Understanding with Idaho Parks and Recreation. The department would then begin the process of identifying parcels of property which either Idaho Parks & Recreation or Idaho Parks & Recreation and some cottage site lessees could acquire for exchange to the Idaho Department of Lands.

Mr. Whittaker stated that the Department of Parks and Recreation is interested in obtaining title to Normal School endowment lands lying within and adjacent to Ponderosa State Park at McCall, Idaho. There are three parcels that are being considered for transfer to the Department of Parks and Recreation.

The department will begin the process of identifying potential properties for the Idaho Department of Parks and Recreation or the Idaho Building Authority to acquire for exchange to the Idaho Department of Lands subject to approval by the land board.

Mr. Whittaker stated that if the exchange takes more than one year to complete, it may be necessary for the Board to consider a rent adjustment in the Lakeview Village lease. This would free up enough cash so that the Idaho Department of Parks and Recreation can accomplish capital improvements necessary to maintain and protect the endowment asset value until the exchange can be completed.

Director Farrell said that the property known, as Ponderosa State Park has been the destination of many of the Treasure Valley people. It is totally beyond capacity and has been for several years. That is what prompted leasing the Lakeview Village property about five years ago. The five (5) percent per year increase in lease rates makes it financially unfeasible for the Department of Parks and Recreation to be able to raise enough revenue to pay the lease rate beyond the year 2000. These are lands that have long been appropriate for public recreation. She said that the Department of Parks and Recreation is comfortable with the Memorandum of Understanding that has been prepared.

State Controller Williams asked why the value was not stated in the Memorandum of Understanding. Director Farrell said it was her understanding that if the land exchange were not completed within one year, there would have to be a re-appraisal to insure that current values are addressed.

State Controller Williams stated that he thought the Board was going to enter into a contract where the value would be set and then paid for at one million dollars per year with land over the term of the installment – like an installment contract. Director Hamilton stated the Department had explored this avenue and felt that this was not appropriate under the law. That would have been looked at as a purchase. With the Building Authority coming into the picture, they have given the Department the capability to deal with this quickly. It is not anticipated that the appraisal would change significantly.

The motion was made by State Controller Williams and seconded by Attorney General Lance to accept the recommendation of the department. The motion carried on a vote of 5-0.

8. Request to approve and accept Clear List from BLM for the State's Indemnity Selection Application IDI-32323 - Presented by Perry Whittaker, Chief, Bureau of Real Estate

Perry Whittaker provided the background information. The state of Idaho did not receive all of its public school entitlement at the time of Statehood as per the Enabling Act for various reasons. The department and the BLM staff are very interested in completing the indemnity selection process. This will allow the public school endowment to receive additional revenue from these lands.

The state currently has an estimated 3,697.04 acres of "base" lands remaining. The State Board of Land Commissioners on April 8, 1997 approved this application in concept. The BLM has completed their environmental analysis, has advertised the indemnity selection for public comment and both the BLM and the Department have agreed on an acceptable package.

The federal land is productive commercial timberland that fits in well with the state owned land. The federal parcels typically lie adjacent to other state land. BLM indicated that the state could receive Clear List No. 5 before the end of 1998. This clear list should just about complete the in lieu selection in Idaho.

The department recommended that the Land Board give approval to acquire the federal lands in state indemnity selection application IDI-32323.

The motion was made by Superintendent Fox and seconded by State Controller Williams to approve the recommendation of the department. The motion carried on a vote of 5-0.

9. Cottage Site rental – Land Board Subcommittee recommendations - Presented by Alvin Carr, Commercial and Recreational Leasing Specialist and State Controller J.D. Williams, Subcommittee Chair

Alvin Carr provided the background information. The Land Board subcommittee has met on several occasions to discuss and review the Priest Lake and Payette Lake appraisal reports, the rental rate, the appeal process, hardship claims and the 10% premium rent. Those have been completed and accepted by the Department.

The following are the recommendations from the sub-committee.

- A. Retain the current market rent as adopted by the Board at their regular meeting of June 4, 1997 which is 2.5% of current county assessed values. For clarification purposes, the current assessed or appraised fee simple value of the land is determined as though the land is vacant and unimproved, subject to any outstanding rights and reservations of record and may at the Department of Lands discretion be determined by a department administered appraisal or county assessed valuation. The 2.5% rate recognizes and takes into consideration the lessee's sweat equity and lessee site improvements. Therefore there would be no deduction or credit granted for lessee site improvements.
- B. Write the rental rate formula into new 10-year leases. This would provide for rental rate stability, which has been a major concern with lessees. Any subsequent lease amendments or extensions for mortgage purposes will be specific to a review of

rental rate in the year 2009. Revision of the cottage site recreational lease will be dependent upon legal counsel review. The new lease would be effective January 1, 2000 and expire December 31, 2009.

- C. Any phase-in of rental rate be considered by the full Land Board.
- D. Adopt the Department of Lands proposed appeal process.
- E. Retain the current parameters for hardship claims as adopted by the Board at their regular June 9, 1998 meeting
- F. Retain the current 10% premium rent. This recommendation will become moot if market rent is achieved.

In addition to the Subcommittee recommendations, department staff recommends that the current 10% premium rent be revised to eliminate the personal property value. The leasehold value shall be determined by subtracting the value of improvements as determined by county assessed value or department administered appraisal from the total sale price.

State Controller Williams asked that the 2 ½ percent of current county assessed values be clarified to include, in Bonner County, the value as determined by the Assessor. He stated that the subcommittee was in agreement that the 2 ½ percent takes into account the various factors that have been raised by the lessees.

State Controller Williams said that the lessees asked that the lease rate formula be written into their leases for stability and it was the consensus of the subcommittee that that would be a recommendation.

As to the phase-in of the rental rates, there was some concern with the subcommittee because of the fact there was no raise in rates for 1999. The subcommittee felt that the full Land Board should make that decision.

The appeals process is if a lessee has a problem with his value as determined by the county, he could come to the Department and make a presentation to them. If he felt he did not receive the relief he sought, he could then come before the full Land Board for determination. If he still was not pleased, he could appeal through the Administrative Procedures Act to the court. This would be an appeal based on the record in the Land Board meeting.

There was discussion as to whether the surcharge issue should remain. The consensus of the subcommittee was that it should remain.

Superintendent Fox said she felt very comfortable with the recommendations being brought before the Land Board. She said that extensive studies were done.

Secretary of State Pete Cenarrusa stated that the phase-in was discussed with legal counsel for both Priest Lake and Payette Lake. There was no increase in 1999 with the consideration that the state goes for full value at 2 ½ percent in the year 2000.

State Controller Williams said that he felt the lessees would like to speak to the issue of a percentage limit of an increase so that it is not an extraordinary amount for one year. Attorney

General Lance said the subcommittee recommendation does not include a cap on fair market value increases. State Controller Williams said that was right.

Attorney Chuck Lempesis, on behalf of his association, commended the subcommittee on their efforts throughout these meeting. He said he felt, in a large part, that the lessees are in agreement with the recommendations of the subcommittee.

Attorney Lempesis said that the 2.5% of market value is fair. If there is an appeal process, that will be the appropriate way to resolve any discrepancies on appraisals. He said with respect to Controller Williams point, the lessees at Priest Lake are not assessed annually, but if the lease that is issued can speak to the issue that it is market value as determined by the assessor rather than the assessment, it would be more accurate.

Attorney Lempesis said in regard to hardship, the lessees have always appreciated the staff and Board's position to help people who are at the point of hardship.

He stated that the lessees do have a disagreement with the 10% surcharge. When the 10% surcharge was adopted, it was done with the view that there was a disparity between lease rates and what the state should be receiving under its Constitutional statutes. That was its sole purpose. It is felt that the 10% surcharge is excess, it is unfair under these circumstances and should be removed in its entirety. He asked that the Land Board consider removing it.

Attorney Lempesis said he has reviewed the appeal process. The lessees had proposed something differently but are willing to accept what is being proposed.

Attorney Lempesis asked to be on the record as not accepting the current valuations.

He stated that the lease incorporating these changes has not been prepared. He asked that any motion that is made or adopted by the Land Board include room for the lessees to have the opportunity to work with legal counsel to review the proposed lease. The lessees would like to have the opportunity to come back and visit with the Land Board on any terms they feel might be in dispute before the final lease is adopted.

State Controller Williams expressed his thanks to all the lessees and their counsel for their efforts on this issue.

Director Hamilton stated that the Department recommends that the 10% surcharge (premium rent) needs to stay. It is based on the fee that a prospective lessee pays to the existing lessee because contract rent is less than market rent. It is a standard procedure. If the rentals get to the point where they approach market rent, what the market is willing to pay, then the 10% would fade away. Department staff feels firmly that this should remain in place.

Attorney Daniel Loras Glynn represented Attorney Dick Greener at this meeting. With him were Mr. Chuck Hervey, President of the Payette Lake Homeowners Association and Richard Smith also of the Payette Lake Homeowners Association.

Attorney Glynn stated that he would echo the sentiments that were previously expressed by Attorney Lempesis from Priest Lake.

He stated that they were present to accept in principal, the recommendations of the subcommittee. The 2 ½ percent is reasonable and being written into the leases will give the security and stability that this process has been striving to obtain.

Attorney Glynn stated that he felt the appeal process also needed to be written into the lease provisions.

Attorney Glynn asked that the Land Board consider a percentage cap with respect to the rental increases. He stated that his association feels this would be a workable solution. Attorney General Lance asked how the Land Board could square their obligation to charge fair market value with a cap – acknowledging that fair market value is something higher than what it is that the lessees are required to pay. State Controller Williams asked Clive Strong, Deputy Attorney General to respond to this question.

Deputy Attorney General Clive Strong started with the Constitution, which empowers the Land Board to administer these lands for the maximum long-term return to the endowments. As a trustee, the Board has an obligation to maximize that return. There are also statutory provisions specifically with cottage site leases that say they will be rented at fair market value. That was the agreement reached, based upon the need to address the issue of being able to continue to lease these properties without going to the conflict auction. He said it was his conclusion, that as a Board, it is the obligation to insure that you are maximizing that return to the endowment and that a phase-in provision would not be consistent with the fiduciary duties.

The motion was made by State Controller Williams to approve the recommendation of the department with the modification that the appraised values at Priest Lake include values as determined by the assessor. That there be no phase-in and that the appeal processes outlined be approved and that the hardship parameters be approved and that the 10% premium rent be retained. Attorney General Lance seconded the motion. The motion carried on a vote of 5-0.

Director Hamilton stated for clarification that it includes writing it into the new leases. State Controller Williams said that the leases would be rewritten. He also added that the motion included the staff recommendation that the current 10% premium rent be reviewed to eliminate the personal property value. Attorney General Lance concurred that the motion included the staff recommendation regarding the 10% premium rent.

10. Air Force Enhanced Training Range State land lease– Owyhee County - Presented by Bob Snapp, Lands Leasing Specialist

Attorney General Lance stated that another arrangement between the department and the Air Force was being considered. He asked that Clive Strong, Deputy Attorney General and Colonel Richey inform the Board as to what is currently being considered.

Deputy Attorney General Clive Strong said that the question is how does this lease relate to the current grazing lease already out on the property. The current grazing lease will remain in place and the lessee will work under the current leasing plan. This would be a secondary lease (or overlay lease) with the Air Force.

Attorney General Lance asked if the Air Force would be a sub-lessee for a while. Deputy Attorney General Strong said the idea would be that there would be two overlaying compatible

leases – it would not be a sub-leasing situation. Attorney General Lance said one lease would be a miscellaneous lease and that information is not available to the Land Board currently.

After considerable discussion, Attorney General Lance asked for unanimous consent to defer any action on this item to the January 20, 1999 meeting. This would allow the Air Force to put in their application for a miscellaneous overlaying lease. There were no objections. The issue will be addressed at the January 20, 1999 regular Land Board meeting.

11. Float Homes – Audience with the Board - Introduced by Bryce Taylor, Bureau Chief, Range Management/Surface Leasing - Presented by Representatives of the Float Home Owners Association

Denny Davis, representative for the float home owners, briefed the Land Board on what the float home owners feel to be exorbitant rental rates imposed by Scenic Bay Marina.

Mr. Davis provided the Land Board with a list of potential grievances that the membership has against the marina. He also provided the Board with figures that reflect information regarding moorage increases. Scenic Bay Marina recently proposed rental increase to their floating homeowners of approximately 50%. He brought out to the Board that this increase is not due to no previous rent increases, or trying to achieve a market rent such as the cottage site lessees. Mr. Davis provided comparison information with other marinas in the area. Scenic Bay did send out notice to the floathome owners that they would implement the raise in rental in early February.

Mr. Davis said that this is really not a free market. Floathomes are difficult to move and would involve a considerable investment by the floathome owner. He stated that the floathomes are a captive audience and are subject to unfair rental practices.

Mr. Davis said due to these circumstances, the owners prepared and presented to the Legislature last year, a piece of legislation called the floating homes residence act. It passed unanimously by both houses and was signed by Governor Batt the bill. This is now in effect and does provide the owners a measure of protection. This legislation does not impose any sort of controls on rent.

There was a meeting between the floathome owners and Scenic Bay and these issues were laid out on the table. There was discussion, but no agreement was reached at that time.

Mr. Davis asked that the department, with direction from the Land Board, work with the float homeowners to reach a fair agreement on the rental rates imposed by Scenic Bay Marina. If lease rates are allowed to be unregulated, floathome owners could be forced out of the marina.

Controller Williams stated that he did not believe Scenic Bay had a lease at this time. Mr. Bryce Taylor stated that they have not consummated their lease at this time. When the lease was mailed to Scenic Bay last April, there were some flaws in the description of the record that Scenic Bay asked to have corrected. These were corrected and the lease was mailed back to Scenic Bay. At this time, Scenic Bay does not have a consummated lease.

State Controller Williams stated that he would like the department to develop a statement for reasonable rates that would be implemented as part of policy for float home marinas. He asked that this be presented at the January 20, 1999 meeting. There were no objections.

12. Military Lease – Portion of Gowan 40 - Presented by Bryce Taylor, Bureau Chief, Range Management/Surface Leasing

Mr. Taylor provided the background information. Idaho's Military Division has applied to lease six acres of Public Building Endowment land adjacent to their military base at Gowen Field. They would fence the property to increase security and use it for a motor pool, training area, or other military purposes.

The land is currently unleased. It has been approved by the legislature for long-term leases for commercial purposes; however, the department has not received or requested board approval for any commercial proposals for this property.

The department recommended to approve a ten-year lease to Idaho Military Division on six acres of Public Building land at \$18,000/year adjusted annually by the CPI-U and appraised each five years to insure rent is keeping pace with time.

General Kane stated that the Military would like a 2-3 year lease at \$5,000 per year. The Military would like to arrange to purchase the property outright. He stated that the Military is currently maintaining the property.

State Controller Williams stated that Gowen Field is a huge economic engine. This area should be part of the base. Governor Batt asked General Kane what the facilities at Gowen Field are worth. General Kane said the physical plant worth at Gowen Field, including equipment that is located there, is about 1.2 billion dollars.

State Controller Williams made a motion to allow the military to have a short-term lease of up to three years for \$5,000 annually. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 5-0.

Superintendent Fox informed the Land Board that her department has been working with the National Guard in looking at an opportunity for students from other parts of the state to come and stay in the facilities at Gowen Field. This would be for a reasonable rate and allow the students to have a site to live while they tour the Capital, see the Governor, etc. She said General Kane's office was outstanding in assisting to put this packet together.

13. Reconsideration of qualified applicant status – O.L. Dudley – expiring grazing lease #G-6597 - Presented by Tracy Behrens, Range Management Specialist

Tracy Behrens provided the background information. The department provided options for the Land Board to consider. They are as follows:

1. Reaffirm the September Board action that qualifies Mr. Dudley as an applicant for the portion of the state parcel on the north side of the Boise River and rejects his application for the land on the south side of the river.

2. Reverse the September Board action and qualify Mr. Dudley to bid for the lease on the state land on the south side of the river. This option should include granting IWP an additional opportunity to submit a management proposal for consideration by the Board before an auction is scheduled
3. Vacate the September Board action that was taken on all three of the applications that were submitted on expiring lease G-6579 and begin the lease renewal process anew.

Secretary of State Cenarrusa made a motion that the Land Board take option #3 to vacate the September Board action that was taken on all three of the applications that were submitted on expiring lease G-6579 and begin the lease renewal process anew. He included in the motion that after HB643 goes into effect, the Land Board could proceed to sell this property. State Controller Williams seconded the motion. The vote carried on a vote of 4-0 with Attorney General Lance abstaining from the vote.

14. Request for final approval to complete a land exchange between the State of Idaho and Jim Reininger - Presented by Dan Spanfelner, Real Estate Specialist

Dan Spanfelner provided the background information. Jim and Connie Reininger, in coordination with the Southwest Area Office have proposed an exchange of state of Idaho land for private land generally located between Boise and Idaho City.

The private land consists of 40 acres and is considered to be a good growing site for timber. The timber is mostly Ponderosa Pine with an estimated volume of 166 MBF. The parcel has access from a logging road.

Governor Batt asked if the state would retain the mineral rights. Mr. Spanfelner informed the Land Board that the state of Idaho would reserve minerals on the State land.

The department recommended final approval of this land exchange.

The motion was made by Superintendent Fox and seconded by Secretary of State Cenarrusa to accept the recommendation of the department. The motion carried on a vote of 5-0.

16. Director's Salary

Governor Batt stated that the Land Board agreed earlier to revisit the Director's Salary issue. The motion was made by Secretary of State Cenarrusa to adjust the Director's Salary as scheduled in the earlier meeting. State Controller Williams seconded the motion. The motion carried on a vote of 5-0.

Prior to the Information Agenda, Stephanie Balzarini, Deputy Attorney General provided the Land Board with updated information regarding the Dupont Dock case. She informed the Land Board that the City of Coeur d'Alene has filed an appeal on the District Court decision in the Dupont matter. They also moved to stay the District Court decision, which would, if granted, affect the department's ability to conduct additional administrative proceedings. She asked for

confirmation on the direction the Land Board would choose to take. She stated that her understanding from the informal discussion last month was that the Board was inclined to proceed with additional administrative proceedings. She stated that Director Hamilton would need direction from the Land Board to initiate those proceedings. Along with that, the department would need to oppose the City of Coeur d'Alene's motion to stay the District Court decision.

Attorney General Lance made the motion to follow the recommendation of counsel. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 5-0.

INFORMATION AGENDA

Director Hamilton briefed the Land Board on the information issues. He stated that the contract work on Triumph Mine is proceeding nicely. Work will cease shortly for the winter months and start again in the spring. Everything that had been scheduled is in progress.

- 17. Timber sale activity report
- 18. Interest rate update
- 19. Triumph Mine cleanup update

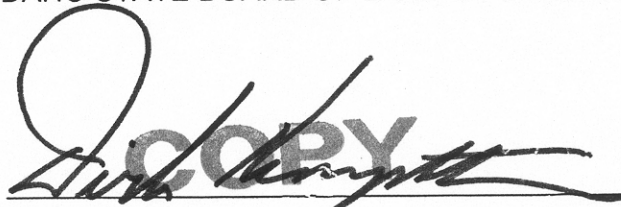
Secretary of State Cenarrusa commended Governor Batt for his work on Land Board during his time in office. He also commended Superintendent Fox for her diligence and commitment to the Board.

Attorney General Lance and State Controller Williams echoed the Secretary of State's comments.

Governor Batt and Superintendent Fox expressed their pleasure at serving on the Land Board.

There being no further business to come before the Land Board, the meeting adjourned at 12:00 noon.

IDAHO STATE BOARD OF LAND COMMISSIONERS


President, State Board of Land Commissioners and
Governor of the State of Idaho

Pete T. Cenarrusa

Pete T. Cenarrusa
Secretary of State



Stanley F. Hamilton

Stanley F. Hamilton
Director